

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DAVID SMITH,

Plaintiff,

v.

**Civil Action No. 3:08-CV-88
(Judge Bailey)**

**DR. DAVID PROCTOR,
TERESA WAID,
JIM RUBENSTEIN,
CORRECTIONAL MEDICAL SERVICES,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on November 18, 2008 [Doc. 16]. In that filing, the magistrate judge recommended that this Court dismiss the Complaint [Doc. 1] with prejudice as to defendants Teresa Waid, Jim Rubenstein, and Correctional Medical Services; and that this Court dismiss the Complaint [Doc. 1] without prejudice as to defendant David Proctor.

On November 20, plaintiff filed a Motion to Amend the Complaint [Doc. 17], and the Court granted plaintiff's Motion on December 2, 2008 [Doc. 19]. In its Order, the Court gave plaintiff thirty (30) days to amend the complaint, and extended the time period in which the parties could file objections to the Report and Recommendation to December 17,

2008. [Doc. 19].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within ten (20) days of receipt of the R & R, pursuant to this Court's December 2, 2008 Order. The docket shows Mr. Smith accepted service of the R & R on November 20, 2008. Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the R & R, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation [Doc. 16] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DISMISSES with prejudice** the plaintiff's Complaint [Doc. 1] as to defendants Teresa Waid, Jim Rubenstein, and Correctional Medical Services; and **DISMISSES without prejudice** the plaintiff's Complaint [Doc. 1] as to defendant David Proctor; and **ORDERS** it **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to mail a copy to the *pro se* plaintiff.

DATED: February 2, 2009.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE